

Marketing and Sale of Fluid Milk in Schools
Interim Rule

Purpose:

Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265) amended section 9(a)(2) of the Richard B. Russell National School Lunch Act by adding a provision that prohibits schools participating in the National School Lunch Program (NSLP), from directly or indirectly restricting the sale or marketing of fluid milk products at any time or in any place on school premises or at school-sponsored events.

Definition:

Fluid Milk: All milk served in the NSLP must be pasteurized fluid milk which meets State and local standards for such milk.

Scope:

Sponsors of the School Breakfast Program (SBP) and the National School Lunch Program (NSLP)

Description:

This interim rule implements legislative provisions to prohibit direct or indirect restrictions on the sale or marketing of fluid milk on school premises or at school-sponsored events, at any time or in any place in schools participating in the NSLP. This rule is intended to ensure that there are no policies or procedures in place that have the effect of restricting the sale or marketing of fluid milk.

This provision may affect vending contracts, in that the intent of Public Law 108-265 is to ensure that exclusive vending contracts do not have the effect of preventing the sale or marketing of milk on school premises. The statute has the effect of prohibiting local educational agencies (LEAs) from entering into contracts that restrict the sale or marketing of fluid milk as a part of a reimbursable lunch in the NSLP as described in 7 CFR 210.10(m) and not changed by this interim rule.

There may be LEAs with existing contracts in place that contain provisions which conflict with the statutory provision and this rulemaking. In order to come into compliance with these requirements, LEAs may either (1) conduct a new procurement or (2) amend their existing noncompliant contracts. LEAs should consult with their legal counsel to determine the appropriate course of action. In either case, the action should be taken at the earliest possible date, but no later than the renewal of the current

procurement contract, or the beginning of School Year 2006-2007, whichever comes first. All subsequent contracts must reflect the statutory and regulatory requirements.

Effective Date: This rule is effective December 21, 2005.

Comment Period: The Food and Nutrition Services invites interested persons to submit comments on this interim rule by May 22, 2006. Comments may be submitted by any of the following methods:

Email: CNDPROPOSAL@FNS.USDA.GOV

Subject line must state: Marketing and Sale of Fluid Milk in Schools

Fax: Mr. Robert Eadie
703.305.2879

Note on cover sheet: Marketing and Sale of Fluid Milk in Schools

Mail: Mr. Robert Eadie, Chief
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Federal eRulemaking Portal: <http://www.regulations.gov> and follow the online instructions for submitting comments.

Source: Federal Register, 7 CFR Part 210, November 21, 2005